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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,875	07/20/2001	Mark Weinberg	CL-1375	3087

7590 02/19/2004

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EXAMINER

WYROZEBSKI LEE, KATARZYNA I

ART UNIT PAPER NUMBER

1714

DATE MAILED: 02/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/889,875

Applicant(s)

WEINBERG, MARK

Examiner

Katarzyna Wyrozebski Lee

Art Unit

1714

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment to the advisory.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.Claim(s) objected to: none.Claim(s) rejected: 1-17.Claim(s) withdrawn from consideration: none.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Katarzyna Wyrozebski Lee
Primary Examiner
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Attachment to the Advisory

In the response filed on 1/28/2004 the applicants argued why it would not have been obvious to combine the prior art of record as applied in the final rejection stated by the examiner. Since the applicants have not made any amendments to the claims and do not bring in new issues and considerations, the response has been entered.

Applicants' arguments have been found unpersuasive for the following reasons:
Applicants have compared data of the prior art of ASHIMA utilizing both unsaturated and saturated fatty acids such as acrylic acids and propionic acids and the differences between the results. Mainly that the unsaturated acids result in desired properties while propionic acid does not.

With respect to the above argument, the prior art of ASHIMA utilizes many different acids as comparison that includes both saturated and unsaturated acids (see Table 4). Both types of acids have properties inferior when compared to the composition employing acrylic acids. The property studied by the prior art of ASHIM is izod impact of the composition and its tensile strength. In fact applicants own Examples (1&2, table 2) report having Izod Impact that lies squarely in the middle of those disclosed in saturated acids of ASHIMA. Therefore ASHIMA discloses the composition, even if in comparative examples. Present invention teaches izod impact of 1.3 while ASHIMA teaches 1.4, 1.8 and 1.6 in the reference examples 4-1 through 4-3 depicted by the applicants.

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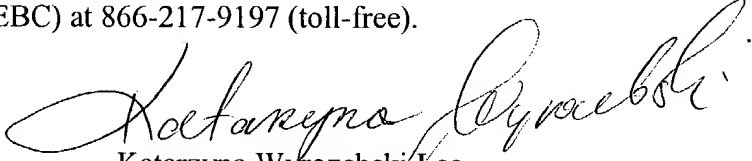
In addition to the above the prior art of Metzemacher teaches the equivalents of the unsaturated and saturated fatty acids in col. 2, lines 32-45), which would render even more obvious to utilized saturated fatty acid of Metzemacher in the composition of ASHIMA.

In view of the above disclosure, rejection over the prior art of ASHIMA and METZEMACHER is not overcome and it is incorporated here by reference.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katarzyna Wyrozebski Lee whose telephone number is (571) 272-1127. The examiner can normally be reached on Mon-Thurs 6:30 AM-4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Katarzyna Wyrozebski Lee
Primary Examiner
Art Unit 1714

kiwl
February 16, 2004